

# **EXHIBIT A**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s): Cristiana Soldani  
Appl. No.: 11/314,042  
Conf. No.: 5453  
Filed: December 20, 2005  
Title: CONFECTIONERY PRODUCT  
Art Unit: 1761  
Examiner: K. Mahafkey  
Docket No.: 112701-689

**AFFIDAVIT UNDER 37 C.F.R. § 1.132**

Sir:

I hereby state as follows:

1. My experience and qualifications are as follows:

I am a food technologist (University degree in Food sciences and technologies, University of Milan, Italy) and at the moment I am responsible of R&D group in The Nestle factory of Perugia, Italy, confectionery division.

---

---

---

2. I am the named inventors of the above-identified patent application and am therefore familiar with the inventions disclosed therein.

3. I have reviewed the outstanding Office Action dated February 22, 2007 pending against the above-identified patent application. In addition to considering the outstanding Office Action, I have reviewed the reference cited therein as well as the pending claims.

4. The present invention is directed, in part, to a confectionery product comprising a glassy amorphous solid and having an unexpected and improved transparency that results when

acidic components, which have conventionally been found to hydrolyze the sugar alcohol, are added at the start of the process for the manufacture of the confectionery product under conditions wherein the acid does not hydrolyze the sugar alcohol. In practical terms, this means that acidic components used in the production of a hard candy can be added during the cooking stage of production, which generally involves the use of a vacuum evaporator to reach the desired final moisture content at a temperature which is low enough to avoid hydrolysis of the sugar alcohol. This procedure enables hard candies produced by this process to achieve improved transmission, resulting in hard candies having reduced opacity.

5. As summarized in the Examples and Figures of the present disclosure, the addition of acidic components of a hard candy at the beginning of the manufacturing process, including the cooking stage, results in a hard candy having a greater transmission than a hard candy produced by a process wherein the acidic components are added during the cooling stage that follows cooking. More specifically, Figure 3 and Table 1 of the present specification illustrate the surprisingly high transmission that is achieved when the acidic components of Example 1 was added during the cooking stage, as opposed to the process of Example 2 wherein the acidic components are added during a subsequent cooling stage. Therefore, although Examples 1 and 2 comprise hard candies having similar ingredients, a surprisingly high transmission is achieved by the addition of the acidic components of a hard candy at the beginning of the manufacturing process.

6. *Rivier I* fails to disclose or suggest a glassy amorphous solid having an improved transparency as evidenced by a transmission of at least 47.8% at 450 nm; and/or at least 50.9% at 550 nm; and/or at least 52.3% at 650 nm. In fact, at no place in the disclosure does *Rivier I* even recognize any glassy amorphous solid having a specific transmission, let alone the improved transmission of the glassy amorphous solid as described herein above.

7. *Rivier I* teaches a conventional process for producing confectionery products wherein acidic components are added after cooking. Specifically, *Rivier I* teaches a casing whose recipe is composed by 80% isomalt, 10% maltitol syrup and 10% water that is cooked to

high final solids until 145°C. The mass is then put in batch under a slight vacuum (0.9 atm.) for 3 minutes. The cooked mass is then discharged on a cooled table and 1% citric acid, 0.15% lemon flavour, 0.8% Acesulfame K are added. The ingredients are mixed until a plastic mass is formed. This mass at 75°C is then introduced in the batch roller. This process will not result in a glassy amorphous solid having an improved transparency as evidenced by a transmission of at least 47.8% at 450 nm; and/or at least 50.9% at 550 nm; and/or at least 52.3% at 650 nm. In fact, because *Rivier I* teaches a conventional process for producing confectionery products wherein acidic components are added after cooking, the resulting transmission will be less than the presently claimed transmission of at least 47.8% at 450 nm; and/or at least 50.9% at 550 nm; and/or at least 52.3% at 650 nm. Because *Rivier I* teaches that the acidic components are added after cooking and because *Rivier I* does not disclose improved transmission properties, *Rivier I* cannot teach the improved transmission properties of the confectionery product discussed herein above or disclosed in the present application.

8. *Rivier II* fails to disclose or suggest a glassy amorphous solid having an improved transparency as evidenced by a transmission of at least 47.8% at 450 nm; and/or at least 50.9% at 550 nm; and/or at least 52.3% at 650 nm. In fact, at no place in the disclosure does *Rivier II* even recognize any glassy amorphous solid having a specific transmission, let alone the improved transmission of the glassy amorphous solid as described herein above.

9. *Rivier II* teaches a conventional process for producing confectionery products wherein acidic components are added after cooking. Specifically, *Rivier II* teaches that a mixture of 80 Kg of isomalt F, 10 Kg of maltitol syrup and 10 Kg of water is cooked under 60% vacuum until reaching a cooking temperature of 155°C. Subsequently, the resulting cooked mass is flavoured, coloured and acidified and cooled down at 70°C. This process will not result in a glassy amorphous solid having an improved transparency as evidenced by a transmission of at least 47.8% at 450 nm; and/or at least 50.9% at 550 nm; and/or at least 52.3% at 650 nm. In fact, because *Rivier II* teaches a conventional process for producing confectionery products wherein acidic components are added after cooking, the resulting transmission will be less than the presently claimed transmission of at least 47.8% at 450 nm; and/or at least 50.9% at 550 nm;

and/or at least 52.3% at 650 nm. Because *Rivier II* teaches that the acidic component is added after cooking and because *Rivier II* does not disclose improved transmission properties, *Rivier II* cannot teach the improved transmission properties of the confectionery product discussed herein above or disclosed in the present application.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001, Title 18, United States Code, and that willful false statements may jeopardize the validity of this patent and any patent issuing therefrom.

Date: 12/06/2007

Print Name Cristiana Soldani

A handwritten signature in black ink, appearing to read "Cristiana Soldani".